UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)

In re:	)	
	)	Chapter 11
BEMA RESTAURANT CORPORATION	)	
	)	Case No.
Debtor.	)	

DEBTOR'S EMERGENCY MOTION FOR
AUTHORITY TO USE CASH COLLATERAL
[Emergency Determination on or before July 7, 2017 Requested]

Debtor Bema Restaurant Corporation ("Bema"), by and through its proposed counsel, Madoff & Khoury LLP, hereby moves this Court for entry of an order pursuant to Sections 361 and 363(c)(2) of the Bankruptcy Code, and MLBR 4001-2, authorizing the use of the cash collateral of the secured creditors in this case, including but not limited to the Massachusetts Department of Revenue (DOR), and certain other secured creditors as more fully described below. **As set forth below, Bema will need to pay certain ongoing expenses, including wages, by Monday, July 10 2017. Accordingly, Bema requests, pursuant to MLBR 9013-1(g), emergency determination of this Motion by July 7, 2017.** In support of this Motion, Bema respectfully represents:

I. Introduction

1. On June 29, 2017 (the "Petition Date"), Bema filed a voluntary petition under Chapter 11 of the Bankruptcy Code in this Court.

2. Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, Bema continues to manage its businesses and financial affairs as a debtor-in-possession. No creditors' committee has yet been appointed in this case.

II. Background

3. Bema is a Massachusetts corporation that owns and operates a Boston area restaurant called Patrons (the "Restaurant"), which is located at 138 Brighton Avenue, Allston, MA.

4. Bema is an affiliate of Sunset Partners, Inc. (Sunset Partners) a Massachusetts corporation that owns and operates two additional Boston area restaurants: the Sunset Grill & Tap located at 130 Brighton Avenue, Allston, MA; and, the Sunset Cantina located at 916 Commonwealth Avenue, Brookline, MA. On June 7, 2017, Sunset Partners filed a separate Chapter 11 case, *In re Sunset Partners, Inc*. Chapter 11 Case No. 17-12178-JNF, in the United States Bankruptcy Court for the District of Massachusetts.

5. In 2016 the Restaurant had net sales of $1,159,444.31. To date, 2017 net sales are approximately $546,073.35.

6. The Debtor's financial difficulties relate primarily to past due meals taxes, in the approximate amount of $80,000.00, owed to the Commonwealth of Massachusetts.

7. This Chapter 11 filing was necessitated by an imminent seizure of the Debtor's assets by the DOR in order to satisfy the meals tax obligation.

III. The Secured Debts

8. The following is a summary of the Bema secured debt (collectively, the "Secured Creditors"):

All Asset Liens

9. In or about April of 2014, the Debtor entered into a financing arrangement with Rewards Network Establishment Services Inc. (the "Rewards Network Obligation"). The Rewards Network Obligation is secured by a lien on all of the Debtor's assets. As of the Petition Date, Rewards Network was owed approximately $13,000.00.

10. In or about October of 2015, the Debtor entered into a financing arrangement with Harold Brown to address certain debt that had been incurred in connection with the purchase of the restaurants in April 2014 by the current owners. As part of the transaction, Brown purchased the building in which the Restaurant is located, alleviating substantial mortgage obligations. In addition, Brown purchased the business debt owed to Middlesex Savings Bank and to the prior owner. The obligation to Harold Brown is secured by lien on all of the Debtor's assets. As of the Petition Date, Bema owes Brown approximately $4,200,000.00.

11. In or about January of 2017, the Debtor entered into a financing arrangement with Intria Ventures (the "Intria Ventures Obligation"). The Intria Ventures Obligation is secured by a lien on all of the Debtor's assets. As of the Petition Date, Intria Ventures was owed approximately $13,000.00.

12. On January 10, 2017, the DOR filed a tax lien against the Debtor's property. As of the Petition Date, the DOR was owed approximately $80,000.00.

Other Secured Obligations

13. In or about May of 2014, the Debtor entered into an agreement with Lenox-Martell, Inc. (the "Lenox-Martell Obligation") for the purchase of a soda mix system, a beer line cleaning system, and a mixed gas generator (the "Lenox-Martell Equipment"). The Lenox-Martell Obligation is secured by the Lenox-Martell Equipment. As of the Petition Date, Lenox-

Martell was owed approximately $7,700.00.

14. In or about June of 2014, the Debtor entered into agreement with US Foods, Inc. (the "US Foods Obligation") for ongoing purchase and delivery of various goods, inventory, and equipment (the "US Foods Inventory"). The US Foods Obligation is secured by the US Foods Inventory. As of the Petition Date, US Foods was owed approximately $25,000.00.

IV. Relief Requested

15. Section 363(c)(2) of the Code provides that, absent consent by the secured party, "The trustee (here, the debtor in possession) may not use, sell or lease cash collateral under paragraph (1) of this subsection unless: (B) the court, after notice and a hearing, authorizes such use, sale or lease in accordance with the provisions of this section." Section 363(e) of the Code requires that the court condition the use of cash collateral as is necessary to provide adequate protection to the secured creditor.

16. Section 361 of the Code provides that adequate protection may be provided by (1) making "a cash payment or periodic cash payments to [an] entity, to the extent that the stay under Section 362 of this title, use, sale, or lease under section 363 of this title . . . results in a decrease in the value of [the] entity's interest in such property," (2) "providing to [an] entity an additional or replacement lien to the extent that such ... use . . . results in a decrease in the value of [the] entity's interest in such property" or (3) "granting such other relief . . . as will result in the realization by [an] entity of the indubitable equivalent of [the] entity's interest in such property." *11 U.S.C. §§ 361(1), (2), (3).*

17. What constitutes adequate protection is determined on a case-by-case basis. *See MBank Dallas, N.A. v. O'Connor (In re O'Connor)*, 808 F.2d 1393, 1396-97 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985). The purpose is to protect a secured creditor from

diminution in value of its interest in the collateral during the period of use by the Debtors. *See In re Ledgemere Land Corp.*, 116 B.R. 338, 343 (Bankr. D. Mass. 1990); *In re Kain*, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988); *Delbridge v. Production Credit Ass'n & Fed. Land Bank*, 104 B.R. 824, 827-28 (E.D. Mich. 1989); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986).

18. In the present case, Bema thus proposes to provide both periodic payments and a replacement lien, as follows:

a. Bema shall pay Rewards Network, Brown, Intria Ventures and the DOR adequate protection in the amount set forth on the Budget, attached hereto as Exhibit A;

b. Bema shall grant the Secured Creditors continuing replacement liens and security interests in the post-petition accounts receivable (if any) to the same validity and extent and priority that they would have had in the absence of the bankruptcy filing; and,

c. Bema shall remain within its Budget, attached hereto as Exhibit A, within an overall margin of 10 percent.

19. The foregoing proposal more than adequately protects the Secured Creditors.

V. Notice

20. No trustee, examiner, or official committee has been appointed in this Chapter 11 case. Copies of this Motion and the Notice of the hearing thereon shall be furnished by ECF, fax or email to: (a) the Office of the United States Trustee for this district; (b) the Debtor's 20 largest unsecured creditors as reflected in the list filed by the Debtor pursuant to Fed. R. Bankr. P. 1007(d); (c) the Internal Revenue Service; (d) the Massachusetts Department of Revenue; (e) the Massachusetts Department of Unemployment Assistance; (f) the Massachusetts Department of

Labor; (g) the Secured Creditors (collectively, the "Notice Parties"). Bema submits that such service constitutes sufficient notice of this Application in the particular circumstances.

VI. Conclusion

WHEREFORE, Bema respectfully requests that this Court: (a) enter an order, in the form attached hereto, authorizing Bema to use cash collateral in accordance with the budget; and (b) grant such other and further relief as this Court may deem just and proper.

Respectfully submitted this 29th day of June, 2017

BEMA RESTAURANT CORPORATION,

By its attorneys,

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